

**REPORT OF THE
SENTENCING POLICY STUDY COMMITTEE**

November 2006

INDIANA LEGISLATIVE COUNCIL

2006

Representative Brian Bosma
Chairman
Indianapolis

Senator Robert Garton
Vice-Chairman
Columbus

Representative B. Patrick Bauer
South Bend

Senator James Lewis
Charlestown

Representative Timothy Brown
Crawfordsville

Senator David Long
Fort Wayne

Representative William Friend
Macy

Senator James Merritt
Indianapolis

Representative Dale Grubb
Covington

Senator Patricia Miller
Indianapolis

Representative Kathy Richardson
Noblesville

Senator Earline Rogers
Gary

Representative Russell Stilwell
Boonville

Senator Thomas Wyss
Fort Wayne

Representative P. Eric Turner
Marion

Senator Richard Young
Milltown

Sentencing Policy Study Committee

Membership Roster

Senator Richard Bray
Martinsville

Senator Glenn Howard
Indianapolis

Senator Anita Bowser
Michigan City

Senator David Long
Ft. Wayne

Representative Ralph Ayres
Valparaiso

Representative Linda Lawson
Hammond

Representative Ralph Foley
Martinsville

Representative William Crawford
Indianapolis

J. David Donahue, Commissioner
Indiana Department of Correction

Dr. Steven Ross
Fort Wayne

Steve Johnson, Executive Director
Prosecuting Attorneys Council

Honorable Randall T. Shepard
Chief Justice of Indiana

Larry Landis, Executive Director
Public Defenders' Council

Michael Cunegin, Executive Dir.
Criminal Justice Institute

R. Todd McCormack
Hendricks County Probation

Sheila Hudson, Executive Director
Allen County Com. Corrections

Honorable Frances Gull, Judge
Allen County Superior Court

Honorable James Humphrey, Judge
Dearborn/Ohio Circuit Court

Honorable Roger Duvall, Judge
Scott County Circuit Court

Honorable Lynn Murray, Judge
Howard County Circuit Court

I. Statutory and Legislative Council Directives:

The authority for the Sentencing Policy Study Committee is found in SEA 95-2005 and HEA 1155-2006 to study the following issues:

(1) Determine the proper category for each felony and misdemeanor, considering the nature and degree of harm likely to be caused by the offense, including whether it involves property, irreplaceable property, a person, a number of persons, or a breach of the public trust, the deterrent effect a particular classification may have on the commission of the offense, the current incidence of the offense in Indiana, and the rights of the victim;

(2) Recommend structures to be used by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including any combination of imprisonment, probation, restitution, community service, or house arrest;

(3) Determine the impact of the effect of suggested sentencing structures on the Department of Correction and local facilities with respect to both fiscal impact and inmate population;

(4) Review community corrections and home detention programs for the purpose of standardizing procedures and establishing rules for the supervision of home detainees; and establishing procedures for the supervision of home detainees by community corrections programs of adjoining counties;

(5) Determine the long range needs of the criminal justice and corrections systems and recommend policy priorities for those systems;

(6) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve the problems;

(7) Assess the cost effectiveness of the use of state and local funds in the criminal justice and corrections systems;

(8) Recommend a comprehensive community corrections strategy;

(9) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems; and,

(10) Evaluate the use of faith-based organizations as an alternative to incarceration.

In addition, *SEA 6-2006 and HEA 1155-2006* requires the Committee to study issues related to sex offenders, including a) lifetime parole, b) GPS or other electronic monitoring, c) a classification for sex offenders, d) recidivism and e) treatment.

The Legislative Council also directed the Committee to study the impact of sealing and expunging criminal arrest and adjudication records, including the impact on employment and recidivism rates

II. Introduction

The Committee met four times each during the 2005 and the 2006 interims, for a total of eight times to study the issues required by the law and the Legislative Council on the following dates:

| | |
|--------------------|--------------------|
| August 30, 2005 | September 7, 2006 |
| September 23, 2005 | September 18, 2006 |
| October 12, 2005 | October 12, 2006 |
| October 28, 2005: | October 18, 2006 |

III. Summary of the Work:

The following is a summary of the Committee's work. The minutes of each meeting and this final report of the Committee are available at www.IN.gov/cji/media/SPSCMinutes.html

Senator Long, as initial Chair of the Committee, in conjunction with the Committee Members, determined that there would be four (4) issues that would be discussed during the 2005 term of the Committee including the following:

- A review of felony sentences to determine proportionality;
- The management of sex offenders and the sex offender registry;
- Community Corrections; and,
- Reentry Courts.

Representative Ayres, as Chair of the Committee in 2006 continued those discussions and included the additional requirements of the Legislative Council after the 2006 session. This included the task of studying the “impact of sealing and expunging criminal arrest records and adjudication records, including the impact on employment and recidivism” (*HB 1405-2006*).

Sentence Proportionality relates to the proportion of offenders committed to the Department of Correction who are confined for very long periods of incarceration, yet are not serving a sentence of “life, without parole”. It is anticipated that by determining who these offenders are, from which county they were committed, and the manner in which they were charged, and the sentenced ultimately ordered, that information can be shared with sentencing court judges and prosecutors to promote more equity in the sentencing process.

The ***Sex Offender Registry*** is the registry that requires a convicted sex offender to enter demographic and residency information that can be accessed by the public as a means to protect residents of neighboring homes, businesses and schools from the convicted offenders. The Committee feels that the definition of “sex offender” needs to be reviewed, clarity needs to be added to the definition of a sexually violent predator, sanctions for sex offenders should be assessed, proportionality and treatment in the charging and disposition of sex offenders should be evaluated and how current methods of managing the sex offender registry can be improved to further protect the public. Issues such as “permanent probation” for sex offenders and whether the current classification of sex offenses is comprehensive also were identified as potential topics of discussion for the Committee. The Committee also expressed an interest in determining how other states are addressing and managing sex offender crimes and issues.

Community Corrections was identified as a focus for the Committee because of the tremendous potential the services provide for the safety of the public both as an alternative to state prison incarceration and as a component of a more integrated and gradual transition and re-entry of an incarcerated felon to the community. Currently, 72 counties participate in the Community Corrections Act program generating \$27 million from project income and diverting numerous offenders to the Department of Correction. Similarly, 97% of offenders confined in the Department of Correction will return to the community, so a thoughtful and successful transition process must be developed. As such, community correction programs and services are integral to an overall strategy to improve public safety, individual offender case plan development and budget outcomes. Numerous potential topics were identified for review and discussion including defining and implementing

“best practice and “what works” services, development of further flexibility in the management of the services, expansion of faith based organization in the service delivery, evaluation of tax credits for businesses that gainfully employ offenders, and appropriate incentives for continued expansion of community corrections services.

These discussions also naturally include the establishment of *pretrial services for offenders*. The Committee believed that effective development and management of pre-trial services may be a means to increase public safety even further and that assessment of a fee for these services to the participant may be a potential manner to fund these services. Various legal issues were identified in the development of any potential legislation to enable further development of pre-trial services, including the “legal status” of an offender who participates in these programs and then is eventually found “not guilty”. Therefore the Committee accepted the suggestion that pre-trial services not be considered jail diversion, but bail/bond diversion. There was concurrence however, that these services should be reserved for people who are not a threat to public safety. This therefore would necessitate the quality assurance management of an effective offender risk assessment as well as an effective assessment tool for the individual needs of the offenders; needs that must be linked to community services to improve public safety outcomes.

Reentry Courts are viewed by the Committee as an effective and vital partner with community corrections and a means to improve public safety outcomes. The effective use of a reentry court can permit the proper assessment of offenders, the specific and individually tailored probation or parole service and supervision plan for the offender, and a coordinated and integrated approach to supervision and treatment. In essence, effective service linkage and treatment alternatives enhance public safety and as such go hand in hand with the purpose of the courts. The Committee also felt that fees assessed to a participant can assist in the funding of the courts. There appeared to be a consensus that a reentry court provides the structure, the monitoring and the service linkage to community agencies and organizations that enhance public safety, improve individual offender behavior and decrease taxpayer costs. Assessment of the offender both for public safety risk and individual service needs is seen as a significant aspect of reentry courts.

A. Testimony at The Four 2005 Committee Meetings

The first meeting focused on orienting and introducing the priorities of the Committee to the members. After the first Committee meeting, each Committee meeting focused on the agreed upon priorities and each topic was

provided significant time to introduce and discuss the issues of community corrections, re-entry courts, payment of pre-trial supervision fees and the management of sex offenders in the community. Testimony on these issues was received from judges, probation and community corrections staff, prosecutors, the Indiana Judicial Center as well as staff of the Indiana Department of Correction. Meeting 2 focused on reentry courts, pretrial fees for treatment and supervision as well as emphasized community corrections and potential legislation. Community corrections services and programs was the topic of meeting 3 with the overall intent to improve accountability, grant award processes and outcome orientated data, so as to increase public safety. Meeting 4 was dedicated to listening and discussing issues related to sex offenders as well as a general discussion concerning the topics and proposed legislation.

Meeting 2, which focused on reentry and pretrial fees for supervision and treatment began with testimony from the Commissioner of Correction. Specifically the Commissioner highlighted the efforts of the Department to ensure:

1. The Department of Workforce Development will distribute basic offender information to the Workforce Investment Boards which will then have the job of interviewing an offender prior to the inmate leaving prison to assess job skills;
2. The Family and Social Services Administration is involved in working out a plan for each offender to meet basic human service needs. Offenders eligible for food stamps will receive them within 30 days of release as an appointment card will be in hand when the offender leaves a correctional facility. Hoosier RX applications will be available for offenders who qualify for Medicaid so they can get more than 30 days medications if needed once they re-enter the community;
3. Offenders scheduled for release can get SSI and disability if determined eligible by the Social Security Administration because the application will be completed prior to release;
4. Money management and life skills are taught to ex-offenders;
5. The Bureau of Motor Vehicles provide a photo ID to an offender upon institutional release to enable an ex offender to get an apartment and a job...two of the most serious obstacles to an offender upon release from incarceration

The reentry court discussions provided an opportunity for the Committee to listen and discuss the existing successes of reentry courts; specifically in Marion and Allen Counties. The focus of the testimony indicated that a coordinated process of re-orientating an offender to the community enhanced public safety by improving supervision and better linking offenders with

needed services in the community. Whereas the Marion County model, which is a component of the Marion County Drug Treatment Program, testimony received both from Marion and Allen counties placed a tremendous amount of importance on proper risk assessment and individual offender service need assessment, linkage of service needs to community services, effective court monitoring and follow-up and funding to sustain the courts. Specific information about the Allen County Re-entry Court was provided by Judge John Surbeck, who endorsed mandatory, rather than voluntary use of reentry courts for all offenders released from the Department of Correction. His testimony included the following:

1. Except for infirmed offenders, the Court accepts all ex-offenders.
2. The offender must apply for admittance to the 12- month program, but can be given an early release upon authority of the Parole Board or Sentencing Judge.
3. The offender must agree to comply with all aspects of the program.
4. The program is operated in conjunction with community corrections, but he personally sees the offender once a month. A strong case management team works on the offender's program and tracks progress every week as well.
5. Significant success has been achieved by the Court staff to arrange and facilitate employment for these offenders, though housing remains a significant challenge;
6. Court staff also has worked successfully to manage any mental health issues via experts working directly with the offender.

The Judge concluded his remarks with a statement that recidivism is down with these individuals. The rate is 34%, versus 66% prior to the program being initiated. He would like to see state-wide enabling of Re-Entry courts via legislation he felt was needed (Which in fact was enacted during the 2006 Session and signed into law).

Additional testimony on the use of pretrial services was presented that indicates the potential to safely and effectively manage specific people charged with a crime in the community. The Committee considered HB 2005-1055 which addresses the issue of pretrial fees for supervision. Proponents of pretrial fees and supervision indicate that:

- The courts provide immediate treatment to defendants who could benefit most from the services rather than waiting until a determination of guilt has been made which could take months;
- Fees are a less cost than pretrial incarceration ; and,
- Decision(s) about program eligibility and management are strictly up to the judges and judges can reduce or waive fees for the indigent and decide who is eligible.

Opponents of pretrial services fees (including the Public Defenders Council) indicate:

- Legislation may provide an unintentional bias against the “presumption of innocence” concept (i.e., if someone who is charged with a crime is ordered to be admitted into a pretrial supervisory program before a determination of guilt or innocence is made).
- No consistent and uniform standards for the services exist. There need to be standards of some sort rather than leaving everything up to the judge’s discretion.
- There is a question of fairness. If someone chooses not to participate, chances are they will go to jail while those who participate remain free (all before a decision of guilt or innocence has been made).
- There may be an issue of constitutionality. Would the state be compelling behavior before a determination of guilt has been made?

The Chair expressed concerns about offenders who are released on their “Maximum Release Date” thereby not being eligible for community transition programs. Instead, these offenders are required to be released with no formal supervision. It was the impression of the Chair that these probably represent a more serious offender who potentially could cause significant public safety concerns upon return to the community. It was on this basis that the Chair felt mandatory participation in community transition was a meaningful benefit to public safety.

In Meeting 3, the Commissioner of Correction indicated that the Department has initiated many efforts to improve: a) accountability for the existing funds, b) grant awards processes by focusing on evidence based and outcome orientated data to assist in making the decisions as well as c) the fiscal and financial infrastructure’s accountability to ensure more accountability and efficiency in the use of taxpayer funds. A significant effort undertaken by the Department is a long terms needs and risk assessment which will accompany an offender upon admittance to the Department and upon release. The Department has established 4 pilot programs at their facilities testing these procedures, and planned to implement a state-wide program upon completion of the pilots

The testimony received on community correction indicates that the expansion of the program by providing an incentive to join the program would be a positive step. Over \$27 million in project income is generated by the community correction grants throughout the state and greater accountability and more productive outcomes must be instilled in that process. The Committee recognized the efforts of Commissioner Donahue in implementing

many correctional initiatives and services using his authority already existing by current statute so as to reduce the adult recidivism rate from 38%.

The Department of Correction is aggressively pursuing a clear focus for funding, a fiscal and accounting means to support those funding decisions, as well as appropriate training and evaluation to promote subsequent and additional improvements. Currently discussions are being undertaken to evaluate the funding formula for community corrections as well as determine if participation of the local parole staff and the workforce development Department staff could improve community partnerships that would promote greater offender accountability and therefore increase public safety.

In Meeting 4, a significant amount of testimony and discussion was received on the management of sex offenders. The Department of Correction testified in support of GPS monitoring of sex offenders. It was recognized that there may be problems in mountainous regions or in basements with the transferring of data in real time, this is recorded and will be transmitted when the signal is strong (matter of seconds). Another concern was the location of these offenders upon their release. In particular, the location of these offenders near daycare centers and schools was mentioned. The standard distance that a sex offender must stay from one of these places is 1000'. The Department said that requirements like these have caused offenders to move to rural communities.

The Committee received information as to how sex offenders are managed when convicted in one state and supervision is transferred to a different state, and heard about the complexities of this process when considering the mandatory supervision of these offenders if they are residents of the receiving state or have family and/or employment in the receiving state. These complexities include victim notification requirements, identification of residency that does not conflict with Indiana law pertaining to sex offenders and continuity of treatment services to promote public safety.

Testimony from prosecutor representatives indicated that their concerns involve gaps in the current registry laws as well as the unintended consequences caused by these gaps, as well as the confusion in managing the registry (which most likely will be resolved by the impending management of the registry by the Department of Correction. Participation in the National Sex Offender Registry was discussed and because Indiana does not have a single data source, the effectiveness of that participation is suspect. A potential manner of more effectively managing this issue probably rests partially on web-enabled technology. Lifetime parole for sex offenders was

discussed with the discussion eventually identifying the cost of the additional parole officers that would be required.

B. Testimony at the Four 2006 Committee Meetings:

The first meeting of the 2006 legislative year was held on September 7, 2006. The Chair requested Jim Hmurovich provide an overview of the Interim Report. Mr. Hmurovich presented the report in three parts: 1) Administrative information required of legislative reports, 2) a summary of the four committee meetings held in 2005 and 3) recommendations made by the committee for legislation.

Member Sheila Hudson made a motion to correct statements on page 8 of the report concerning testimony by Judge John Surbeck on the Allen County Re-Entry Court. Judge Gull seconded the motion and the motion carried unanimously by consent.

Member Larry Landis made a motion to add the word “fees” to the paragraph outlining a position held by the Public Defenders Council on page 9. The motion was seconded by Todd McCormack and the motion carried unanimously by consent.

Member Lynn Murray identified a correction that was accepted by the Chair as a technical correction. Senator Bray moved that the report be accepted with the suggested corrections. Commissioner Donahue seconded the motion and the motion passed unanimously by consent.

Recent Case Involving Sex Offender Residency Limits:

Steve Johnson, Executive Director of the Prosecuting Attorneys Council presented concerns about the current inconsistencies in the criminal code about the definition of “violent sex offender predator” and the impact of that on the sex offender registry and enforcement of the laws. He also noted that it is unclear whether the law which took effect in July 2006 requires a retroactive entry of the sex offender in the sex offender registry. Mr. Johnson believes clarity is needed in the statute to determine whether “grandfathering” of offenders is warranted, whether an offender should be required to move from a residency located within a statutorily defined prohibited area and whether judicial discretion should be allowed in making a determination of which offender should be classified as a violent sexual predator. A concern was voiced by Mr. Landis that the definition of the violent sex offender predator is becoming so broad that it both diminishes the

importance and seriousness of the label, as well provides a disservice to the public for being so broad.

Discussion about Future Meeting Topics and Establishment of a Meeting Schedule:

The Chair informed the committee that there were three avenues of input on potential topics: 1) Statutory or Legislative Council requirements, 2) Suggestions from the Committee Members and 3) Suggestions received from the Public.

Each suggestion was presented by the “sponsoring” Committee member and Jim Hmurovich provided an overview of the suggestions received from the public. In total, 15 suggestions were received. The Chair decided that two additional meetings would be scheduled to accept testimony on selected topics and the third meeting to be scheduled would focus on review and discussion of the Final Report. The schedule more than likely will not allow for a discussion of all 15 topics. The second meeting of the Committee will focus on statutory and Legislative Council requirements for the Committee, and the third meeting will highlight the most pressing issues that require legislative involvement.

The second meeting was held on September 18, 2006 and included the following topics:

Adam Walsh Legislation and Its Impact on Indiana:

Steve Johnson, the Executive Director of the Prosecuting Attorneys Council and a Member of the Committee, provide a selected in-depth review of the Adam Walsh legislation, as it relates to the Sex Offender Registry, the three tier sex offender classification system and registry reporting requirements. Highlights of the presentation included Mr. Johnson’s analysis of the bill that:

- a. The federal legislation provides an opportunity for Indiana to legislate more judicial discretion when addressing the issue of sexual misconduct of a minor and the registry, if that is the public will;
- b. Illustrates various differences between current Indiana law and the federal legislation in the areas of a) the length of time for which a sex offender must register and how often, b) residency and registry requirements, c) how quickly a sex offender must register upon conviction and/or release from incarceration, d) information required in the registration process as well as the

- information that is to be contained on the registry, and e) a process in which to correct an inaccuracy in the registry;
- c. Identified penalties for non-compliance; and,
- d. Identified funding opportunities for Indiana in various areas, including DNA analysis.

The Chair requested that Mr. Johnson work with members Bray and Landis to develop proposed legislation that could be discussed at the 3rd meeting of the Committee that identifies specific language Indiana should consider in order to be compliant with the federal legislation, improve public safety outcomes and access the greatest degree of funding to meet the intent of the act.

Public testimony was received from Mr. Charles Goodman who specifically asked the Committee Members to consider the funding and penalty provisions, the civil commitment process option and the difference between risk assessment and risk classification processes.

Current Offender Treatment and Classification:

Dr. Bill Elliott, the Director of Mental Health Services for the Indiana Department of Correction provided testimony about current assessment and treatment processes used by the Department as well as the treatment provided to sex offenders. He stated that the Department's use of a process to accomplish this allows for the correct allocation of valuable resources, as well as establishes the intensity of the treatment based upon classification of the offender.

The Static 99 instrument is used to assess adult offenders, while a separate tool is used to assess juvenile offenders. He stated that there are three classifications of sex offenders:

- a) High risk, who received 160-200 hours of treatment;
- b) Medium risk, who receive 120-160 hours of treatment; and,
- c) Low risk, who receive 60-100 hours of treatment

Effective 7-0-06, every sex offender is ***required*** to receive treatment; it is no longer voluntary. Because "denial" is such a significant issue in treating a sex offender, this provides a platform to begin the treatment process. The statute also allows for loss of credit time for refusal to enter treatment. Currently approximately 800 offenders have been offered treatment and only 7 have refused.

The sex offenders are offered group (peer confrontation counseling), individual treatment, (most often for low functioning offenders). A psycho-educational model is used. Currently, adult male sex offenders are assigned to Miami Correctional Facility or the Plainfield Correctional Facility, the Indiana Women's Prison for female adult offenders and the Pendleton Juvenile Facility for male juveniles and the Indianapolis Correctional Facility for juvenile females.

Dr. Elliott provided a "return rate" for sex offenders in Indiana of approximately 10.8% for the period of 1999-2006, but clearly stated that there are many factors that compound why that rate may not be a true picture of reality. These variables include the methodology and definitions that are used to calculate a "return rate" versus a "recidivism rate" and the fact that the treatment only became mandatory several months ago, thereby skewing a rate that is more favorable when offenders voluntarily seek and receive treatment.

In the next three years 800 sex offenders will be released, while 300 are in treatment now. A plan is in place to offer the treatment to all offenders being released. Dr. Elliott stated that 25% of the offenders are "low risk of offending again, while 40% are at medium risk and 35% are at high risk. Representative Crawford asked for an "off-line" response on the educational and experience requirements of the various behavioral staff working with sex offenders.

Sex Offender Residency Restrictions and GPS Tracking:

Randy Focken, the Director of Parole Services for the Indiana Department of Correction provided an overview of the manner in which an offender is supervised within a community setting. He identified three major factors to the success transition of an offender into the community:

- Housing
- Employment
- Transportation

Of special note was the issue of housing. He provided testimony that there are at least two significant reasons why an offender has difficulty in obtaining housing: a) often the victim of the offense is a person who lives in the home in which the offender would have wanted to return, and b) the statutory restrictions on the geographic locations that are prohibit residency by a sex offender, i.e., schools, daycare homes and centers.

Currently there are 624 sex offenders under parole supervision, and 226 are classified as high risk. He stated that the Division works conscientiously to provide all victim and law enforcement notifications as required by law. He also identified the advantages and challenges associated with GPS tracking of sex offenders. These include a) cost to operation, b) fees that would be assessed to an offender, geographic and topography concerns that make GPS tracking difficult and the increasing caseload that is projected. Sex offenders currently pay approximately \$2500 per year for sex offender treatment and polygraphs received while on parole supervision.

Impact of Sealing and Expunging of Criminal Records:

Testimony was received by Olgen Williams, Executive Director of the Chrisamore House, Maxine Bryant from the U.S. District Attorney's Office and Dr. Shelvy Keglur of the Indiana Minority Health Professional Association. They presented testimony to the Committee that identified the difficulty in obtaining employment for certain offenders who especially have spent a significant time leading a law abiding life after their felony conviction. The testimony focused on the following issues:

- This is not a request for amnesty, but for forgiveness for a past violation of law;
- Expungement, or more commonly, sealing of records, should be driven by a statute that presents what offenses and under what circumstances the offense could be expunged or sealed;
- That there is no intention to shield an offender from an employer's "need to know" to ensure the employer and all employees are safe, e.g., forgery or embezzlement if a person is requesting a financial officer position, a sex offense for a child-related position).
- That the only manner in which this process could be successful is a complete collaboration between government, employers, community groups and faith-based organization; and,
- A re-look at Indiana's relatively stringent criminal record expungement laws.

Representative Crawford made the tie between employment of ex-offenders and the relationship to economic development as well as echoed the comments from various presenters and Committee Members that there is a moral reason to consider this change. It was suggested that HB 1408 from a prior legislative session could be a "*framework*" in which to introduce this issue to the general assembly next year.

There was a very good discussion of the “public right to know”, the importance of an ex-offender obtaining employment in order to successfully transition to the community and issues of public safety.

Public testimony was received from Dave Rozzell, a Special Assistant to the Director of Public Safety for the City of Indianapolis who identified some current strategies being implemented by the city to overcome these issues, in partnership with all segments of the community.

The third meeting was held on October 12, 2006 and included a discussion of the following issues.

Adam Walsh Legislation and Its Impact on Indiana:

Steve Johnson, the Executive Director of the Prosecuting Attorneys Council and a Member of the Committee, provided an overview of PD 3440. This is a proposed bill that amends Indiana statutes to come into further compliance with the federal Adam Walsh legislation. Failure to reach total compliance (within 3-5 years) may result in the loss of as much as 10% of the Byrne funds from the U.S. Department of Justice, which currently would be estimated to be a loss of approximately \$350,000. Federal administrative regulations are being drafted at this time, but the approval of those regulations will not be completed prior to the initiation of the 2007 Indiana legislative session.

PD 3440 addresses the issue of sex offenders and adds language to the current statutes that adds the following: a) promoting prostitution as a class B felony, b) promotion of human trafficking if the victim is less than 18 years old, c) sexual trafficking of a minor, d) human trafficking of a victim less than 18 years old, and, e) possession of child pornography as a first offense, to the list of offenses that requires a person to register as a sex offender. It also specifies that registration as a sex offender is not required for a parent or guardian convicted of kidnapping or confining a child of the parent or a child over whom the guardian has guardianship, or a person convicted of sexual misconduct with a minor a class C felony under certain conditions. It also removes lifetime registration requirement for sexual battery as a class D felony and imposes the standard ten year registration requirement.

The Committee Members engaged in a comprehensive discussion of the Preliminary Draft and a motion was made by Senator Long and seconded by Senator Bray to make some minor modifications to the draft. Senator Long then moved for adoption of Preliminary Draft 3440 and the motion was seconded by Senator Bray. The Committee approved the draft by a roll call

vote, 16-0 in favor of adoption of PD 3440 as a product of the Sentencing Policy Study Committee.

Suggested Modifications to the Community Transition Program:

Deana McMurray, Director of Community Corrections for the Department of Correction provide a brief overview of the community transition process, identifying that a significant number of offenders who are eligible for the program are not accepted into the program. Refusal by an offender to sign a consent form to participate in the program provides the offender with the ability to refuse to participate in the program, and the statute allows the offender to delay admittance into the program. Judges and correctional administrators appear to be in consensus that the offender should not have the ability to control this process. This is especially important due to the fact that over 95% of the offenders will be released from the Department of Correction and a systematic, coordinated re-entry into the community is an important aspect of public safety.

Another area that requires review of the current statutes is the disciplinary process. Randy Koester, Chief of Staff for the Department of Correction indicated that there is inconsistency and inequity in which disciplinary process is managed throughout the state. The impact of this is an inconsistent adherence to the due process rights of an offender, as well as a frequent lack of documentation to substantiate or indicate how and why a decision was made. Therefore, a discussion ensued that focused on the ability of the Department of Correction to have some authority in the disciplinary process to ensure consistency and uniformity. It was suggested that in part, this could be accomplished through training, having counties mirror the process for disciplinary action used by the Department of Correction, and a more clear definition of what constitutes a hearing. The Department of Correction is seeking statutory clarity on this entire issue.

Another significant issue involves the removal of credit time when the offender is near completion of the entire sentence. Errors in that process so close to a potential release date significantly impact exposure for the Department to offender claims and grievances. Similarly, a significant number of offender appeals are filed due to the severity of punishment without appropriate documentation of “what happened” and “why”.

The Chair requested that Committee Members Hudson and Foley work with the Department of Correction and the Legislative Services Agency to develop a preliminary bill draft for the next meeting of the Committee.

The Vigo County Community Corrections Director, Bill Watson testified in favor of statutory changes to prohibit offender “opt outs” of the community transition program and more consistency in the determination of disciplinary decisions. The Department of Correction was appreciative for the discussion as community corrections is seen as a means to promote public safety for the successful re-entry of an offender into the community.

Methamphetamine Offender Registry:

The Chair expressed interest into assessing the importance of establishing a methamphetamine offender registry in Indiana. He noted that 4 states have this type of registry and that they do not present the management difficult involved in the sex offender registry. With this type of registry, it is a simple reporting by a court, of statutorily identified crimes that would have to be reported by the Court to the registry database; there is no offender registration. The Chair noted that the consequences for harm (due to the chemical residue and processes) have serious health effects on children and individuals exposed to the fumes. A discussion was held about whether the registry should focus on individuals convicted of possession or use as opposed to manufacturers. The Chair requested that the Legislative Services Agency develop a preliminary bill draft for a registry for the next meeting.

Impact of Sealing and Expunging of Criminal Records:

A follow-up discussion was held concerning the expungement of criminal records. There was a diversity of thought on this topic from the various Committee Members. There was some agreement that current Indiana law on expungement is very strict, but there also was some agreement that proposed HB 1408 (prior session) was too broad. A potential area to find common ground was to a) restrict the offenses that could be expunged, including timeframes, and, b) accessibility to the Courts and law enforcement of all crimes regardless of expungement. A concern was expressed that the statute should allow for use of an expunged record in the prosecution of a “habitual offender”. It was again noted that HB 1408 simply was intended to be a “framework” to initiate a dialogue and not to be considered a final working draft.

Ronald Poling vs State of Indiana:

LSA attorney Andy Hedges provided an overview of an appellate court case that reversed a lower court's ruling on a neglect finding, because the statutory criteria of a Class B and a Class C neglect felony were identical. A discussion followed by Committee Members to develop statutory language that would differentiate the two felony types. The Chair requested that LSA work with Committee Members Steve Johnson and Senator Bray to develop a preliminary bill draft by the next meeting.

Other Preliminary Bill Drafts:

LSA attorney Andy Hedges provided an overview of a document identified as 20070106.010/106 that corrects certain cross references that relate to HIV testing after convictions for certain sex and substance abuse offenses and makes other changes and conforming amendments to IC 31-37-19-12 concerning a delinquent child, due to the commission of a delinquent act that if committed by an adult Representative Crawford moved for adoption of the changes and the motion was seconded by Todd McCormack. The Committee approved legislation by a roll call vote 12-0 in favor of the adoption of the amendments as a product of the Sentencing Policy Study Committee. Senator Bray agreed to sponsor the bill in the Senate.

Mr. Hedges also provide a very brief overview of PD 3437 which specifies the procedure for determining who is a sexually violent predator and revises the definition of "sex offense. Due to the lateness of hour and the importance of the issue, the Chair deferred action on the preliminary draft until the next Committee meeting.

The fourth meeting was held on October 18, 2006 and discussion of the preliminary legislative drafts that had been prepared as a result of the testimony during the past three meetings was the purpose of the meeting. This meeting of the Sentencing Policy Study Committee included the review and discussion of: a) six preliminary drafts of proposed legislation prepared by the Legislative Services Agency; b) consideration for re-authorization of the Sentencing Policy Study Committee, which expires on 12-31-06; and c) review and approval of the final report of the committee.

IV. Committee Findings and Recommendations:

The Committee did not make any findings of fact.

The committee made the following recommendations:

- ***PD 3394*** establishes a reentry court under a court holding felony, misdemeanor or juvenile jurisdiction over certain persons released from the Department of Correction and authorizes the court to provide reintegration services to persons released from the Department, for a period of no more than 365 days, and establishes a procedure for approval of a reentry court and authorizes the court to establish reasonable fees. The Committee approved the draft by a roll call vote, 13-1 (October 28, 2005).
- ***PD 3397*** authorizes a court to require a person charged with an offense who is placed on bail and supervised by a probation officer or pretrial service agency to pay a pretrial services fee to defray the cost of supervision, if the person has the financial ability to pay the fee, and the court finds by clear and convincing evidence that supervision is necessary to ensure the appearance of the person in court, and the physical protection of another person or the community. The draft also prohibits the Bureau of Motor Vehicles from issuing or re-issuing a license of a person who has not paid the pretrial services fee. The Committee approved the draft by a roll call vote, 12-1. (October 28, 2005).1) ***PD 3498*** which specifies that person commits neglect of a dependent as a Class C felony under certain conditions involving deprivation of food, water, or sanitary facilities, confines the child in an area not intended for human habitation or use of handcuffs, rope., cord or similar devise to physically restrain a child. Committee discussion resulted in a consensus that “tape” should be added to the restraint method. Senator Long moves adoption of the preliminary draft with the amendment and Judge Duvall seconded the motion. By a roll call vote, the committee passed the motion 16-0. (October 28, 2005)
- ***PD 3479*** modifies the community transition program to remove the option of the offender to delay participation; assigns a 180 day commencement date for offenders who have been accepted and assigned to a reentry court; requires an offender to serve at least a one year sentence (Note: the original version of the PD included the one year sentence language; during the discussion and amendment process, it was changed to “two years”, which is current law); requires the Department of Correction to notify a community transition program 120 in advance before an offender is assigned to the program; requires the Department of Correction to provide information to the Community Transition Program; permits an

offender to make written statements about participation in the program; authorizes the Department to delay an offender's participation if the offender is participating in a departmental program, authorizes the Department to terminate an offender's participation if an offender violates CPT rules; establishes procedures for a CTP to conduct disciplinary hearings; and requires a CPT to notify the Department within 24 hours if an offender is absent without authorization, as well as other conforming amendments. The draft initiated a lengthy discussion that resulted in amendments to ensure that local prosecution of criminal offenses related to the program violations was not impeded by the statute and that the Department would provide disciplinary hearing training with local community transition programs. The training motion was made by Commissioner Donahue, and the second was provided by Senator Bray. By consensus, the committee passed the motion. Representative Foley moved for adoption of the preliminary draft with the amendments, and Judge Gull seconded the motion. By a roll call vote the motion passed 16-0. (October 18, 2006)

- ***PD 3497*** specifies the procedure for determining a sexually violent predator and revises the definition of "sex offense". A discussion was held concerning the potential limiting effect of defining which experiences the "board of experts must be comprised: that is used by the court. It was determined that further investigation of that issue would be undertaken. Steve Johnson recommended that "an emergency" clause be placed in the bill and Representative Foley moved for adoption of the preliminary draft and the second was provided by Senator Bray. By a roll call vote, the motion passed 15-0. (October 18, 2006)
- ***PD 3492*** requires the establishment of a methamphetamine manufacturer registry by the Indiana State Police. Commissioner Donahue recommended that the bill not be retroactive to dates prior to the effective date of the law in order. Representative Foley recommended exclusion of residency in the bill, seconded by Judge Gull, and subsequently moved for approval of the draft which was seconded by Michael Cunegin. By a roll call vote, the motion passed 15-0. (October 18, 2006).
- ***Reauthorization of the Sentencing Policy Study Committee:*** The Chair asked for a discussion concerning the continuation of the work of the committee. Representative Foley moved for continuation, and a second was proved by Judges Duvall and

Humphrey. By a roll call vote, the motion passed 13-0. (October 18, 2006)

- ***PD 3483*** prohibits a sentencing court to disclose too non-criminal justice agencies, a person's criminal history if that person is convicted of a misdemeanor or a Class D felony that could have been reduced to a misdemeanor under certain conditions. A lengthy discussion was held and Representative Crawford requested that the preliminary draft be withdrawn from and instead asked that the committee recommend that the general assembly consider legislation that would permit rehabilitated offenders who have reintegrated into society with a second opportunity, while recognizing the legitimate safety concerns of the community. There was an un-voted consensus that the current Indiana laws on criminal record disclosure and expungement were some of the most strict, and that while the discuss is timely and should be held, there was not adequate time in the committee's agenda to provide the discussion needed for this important issue. (October 18, 2006)
- ***PD 3396*** reconciles various inconsistencies in the current law regarding definition of "felony" and when a certified copy of the sentencing ordered issued in connection with the removal of a public official must be filed. Representative Foley moved for adoption of the draft and Judged Barnes seconded the motion. By A roll call vote, the motion passed 14-0 (October 18, 2006)
- ***PD 3488*** corrects certain cross references that relate to HIV testing after conviction for certain sex and substance abuse offenses. Judge Barnes moved for approval of the draft and Representative Foley seconded the motion. On a roll call vote, the committee approved the motion 14-0. (October 18, 2006)
- ***Approval of the Draft Final Report:*** After a brief overview of the report, Senator Howard moved that the report be forwarded to the General Assembly and the Legislative Council. Judge Gull seconded the motion and by a roll call vote, the motion passed 14-0. (October 18, 2006)

V. **Witness List:**

Maxine Bryant, U.S. District Attorney's Office, Southern District of Indiana

Dr. Bill Elliott, Director of Mental Health Services, Department of Correction

Randy Focken, Director of Parole Services, Department of Correction

Charlie Goodman, Indianapolis, Indiana

Dr. Shelvy Kegl of the Indiana Minority Health Professional Association

Randy Koester, Chief of Staff, Department of Correction

Deana McMurray, Director, Community Corrections Programs, Department of Correction

Honorable John Surbeck, Allen Superior Court

Bill Watson, Director, Vigo County Community Corrections

Olgen Williams, Executive Director of the Chrisamore House

IV. Final Report:

The committee is required to file a final report with the Legislative Council by November 1, 2006.